

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JERRY DALE DRAWHORN,

Plaintiff,

v.

CRAIS KOENIG, et al.,

Defendants.

Case No. [19-cv-01269-HSG](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

INTRODUCTION

Plaintiff, an inmate at Correctional Training Facility – Soledad, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed *in forma pauperis* in a separate order. His complaint (Dkt. No. 1) is now before the Court for review under 28 U.S.C. § 1915A.

DISCUSSION

A. Standard of Review

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity, or from an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b) (1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not

necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated; and (2) that the violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Complaint

Plaintiff has named as defendants the following individuals: Officer Cuevas, Officer Balding, Lieutenant Reed, Officer Murphy, Officer Pineda, Officer Pina, Officer Liberatore, Officer Castro, Officer Rae, Officer Garza, and John Does 1–20. Dkt. No. 1 at 2. In the complaint, Plaintiff alleges that he has been physically assaulted, threatened, harassed, given frivolous 115s (rules violation reports), taunted, laughed at, lied to, denied physical access to the law library despite having an active case, had his mail ripped into, had his safety threatened, and been disrespected.

Plaintiff’s allegations fail to state clearly what each defendant did, when the action happened, and how those actions or inactions rise to the level of a federal constitutional violation. The lack of detail prevents the Court from determining which claims deserve a response and from whom, and also prevents individual defendants from framing a response to the complaint. The Court will grant Plaintiff leave to file an amended complaint. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (“a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts”) (citation and internal quotation marks omitted); *see also Ramirez v. Galaza*, 334 F.3d 850, 861 (9th Cir. 2003) (leave to amend “should be granted more liberally to

1 *pro se* plaintiffs”) (citation omitted). In his amended complaint, Plaintiff must specifically
2 identify what each named defendant did or did not do with regard to each separate claim.
3 Sweeping conclusory allegations will not suffice. Plaintiff should not refer to the defendants as a
4 group (e.g., “the defendants”); rather, he should identify each involved defendant by name and
5 link each of them to his claims by explaining what each involved defendant did or failed to do that
6 caused a violation of his rights. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). The
7 complaint need not be long. In fact, a brief and clear statement with regard to each claim listing
8 each defendant’s actions regarding that claim is preferable.

9 The Court notes that some of the incidents described in the complaint do not give rise to
10 constitutional claims. Allegations of verbal harassment and abuse fail to state a claim cognizable
11 under 42 U.S.C. § 1983. *See Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997) *overruled in*
12 *part on other grounds by Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008); *Rutledge v.*
13 *Arizona Bd. of Regents*, 660 F.2d 1345, 1353 (9th Cir. 1981), *aff’d sub nom. Kush v. Rutledge*, 460
14 U.S. 719 (1983); *see, e.g., Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996), *amended* 135 F.3d
15 1318 (9th Cir. 1998) (disrespectful and assaultive comments by prison guard not enough to
16 implicate 8th Amendment); *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (directing
17 vulgar language at prisoner does not state constitutional claim). Allegations of mere threats also
18 are not cognizable under § 1983. *See Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (mere threat
19 does not constitute constitutional wrong, nor do allegations that naked threat was for purpose of
20 denying access to courts compel contrary result).

21 Plaintiff has named as defendants John Does 1–20. As a general rule, the use of “John
22 Doe” to identify a defendant is not favored. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir.
23 1980). However, when the identity of alleged defendants is not known prior to the filing of a
24 complaint, the Ninth Circuit has held that the plaintiff should be given an opportunity through
25 discovery to identify the unknown defendants, unless it is clear that discovery would not uncover
26 the identities, or that the complaint should be dismissed on other grounds. *Wakefield v.*
27 *Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999). In the amended complaint, Plaintiff should
28 identify the Doe defendants or, in the alternative, submit to the Court an explanation of what he

1 has done to try and learn the Doe defendants' names and why he has been unsuccessful.

2 **CONCLUSION**

3 For the foregoing reasons, the complaint is dismissed with leave to amend to address the
4 deficiencies identified above. Within **twenty-eight (28) days** of the date of this order, Plaintiff
5 shall file an amended complaint. The amended complaint must include the caption and civil case
6 number used in this order, Case No. C 19-01269 HSG (PR) and the words "AMENDED
7 COMPLAINT" on the first page. If using the court form complaint, Plaintiff must answer all the
8 questions on the form in order for the action to proceed. Because an amended complaint
9 completely replaces the previous complaints, Plaintiff must include in his amended complaint all
10 the claims he wishes to present and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*,
11 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the prior
12 complaint by reference.

13 **Failure to file an amended complaint in accordance with this order in the time**
14 **provided will result in dismissal of this action without further notice to Plaintiff.**

15 The Clerk shall include two copies of the court's complaint with a copy of this order to
16 Plaintiff.

17 **IT IS SO ORDERED.**

18 Dated: 4/18/2019

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20 HAYWOOD S. GILLIAM, JR.
21 United States District Judge
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